

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 10952 of 1996(D)

PETITIONER:

S.SULEKHA BANU,
SEENATH COTTAGE
PANAYUR P.O.
POLPULLY,
PALAKKAD.

BY ADV. SRI.K.RAMAKUMAR
SMT.S.A.SHERLY

RESPONDENTS:

1. THE SECRETARY TO GOVT.,
AGRICULTURE (DAIRY) DEPARTMENT
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
(DAIRY), THIRUVANANTHAPURAM
3. THE BOARD OF DIRECTORS OF THE POLPULLY
KSHEERA VYAVASAYA SAHAKARANA SANGHOM LTD.,
NO.P551, REPRESENTED BY ITS PRESIDENT
4. THE POLPULLY KSHEERA VYAVASAYA SAHAKARANA
SANGHOM LTD., NO.P551, REPRESENTED BY ITS
SECRETARY, P.O. POLPULLY, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP.No. 10952 of 1996(D)

ORDER ON C.M.P. NOS.18895/1996 AND 25604/1997

DISMISSED.

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

23/05/2007

A P P E N D I X

PETITIONERS EXT:

- EXT.P1 TRUE COPY OF OBJECTION DATED 26/01/1994 BY THE PETITIONER.
- EXT.P2 TRUE COPY OF ORDER DATED 09/02/1994 BY R3 TO THE PETITIONER
- EXT.P3 TRUE COPY OF ENQUIRY REPORT DATED 01/09/1994 BY THE ENQUIRY OFFICER
- EXT.P4 TRUE COPY OF RESOLUTION DATED 01/11/1994 BY R3
- EXT.P4(a) TRUE COPY OF SHOW CAUSE NOTICE DATED 01/11/1994 BY R3
- EXT.P5 TRUE COPY OF ORDER DATED 15/11/1994 BY R3
- EXT.P6 TRUE COPY OF ORDER DATED 15/06/1995 BY R2
- EXT.P7 TRUE COPY OF G.O.(Rt) NO.716/96/AD DATED 06/05/1996 BY R1

\\TRUE COPY\\

THOTTATHIL B. RADHAKRISHNAN, J

O.P.No. 10952 of 1996 (D)

Dated this the 23rd day of May, 2007

J U D G M E N T

The petitioner, while working as Junior Clerk in the fourth respondent Society, was put in charge of the Secretary.

2. Disciplinary proceedings were initiated against the petitioner on allegations of different counts of misappropriation including all small amounts, as also allegation of attempt and misappropriation. Her defence to the memo of charges was that the alleged misappropriations were during the course of electoral process in the Society and, therefore, under the control of the Returning Officer and, hence, not within the realm of discipline at the hands of the elected court. She denied having manipulated the vouchers. She also stoutly denied all the allegations on fact.

3. However, when the disciplinary authority proceeded to have an enquiry conducted and a domestic enquiry was initiated

by appointing an Advocate, the petitioner took the stand that the election to the Board itself is a matter pending adjudication before Court and, therefore, any action taken by the Board is also only subject to the decision of that Court. The petitioner took the further contention that the advocate, who was appointed as an enquiry officer, had been appearing for one of the members of the elected Board in some case before a Court. Still further, the learned counsel for the petitioner urges that, that advocate owes allegiance to the political party to which the elected members of the Board of the Society belong. On such allegations, a case of bias was attempted to be established as against the enquiry officer, the advocate.

4. Though the objections taken by the petitioner as against the identity of the enquiry officer on counts of the bias was repelled by the management, by Exhibit P2, the petitioner chose not to participate in the disciplinary proceedings and she stood ex-parte in the domestic enquiry. The enquiry officer, after considering the entire materials placed before him including the vouchers and other registers, etc., gave Exhibit P3 enquiry

report, holding that the original petitioner is guilty of charges 1 to 7, out of the eight charges framed against her.

5. In the realm of the Kerala Co-operative Societies Act, 1969, the statutory proceedings stand decided against the petitioner by the Registrar of Co-operative Societies refusing to rescind the resolution of the Board dismissing the petitioner from service and, the Government affirming the decision of the Registrar by rejecting the appeal against it.

6. Seeking judicial review of the decisions of the Government and the Registrar, it is contented by the petitioner and argued on her behalf that the identity of the enquiry officer with the Board is such that it is a case of demonstrable bias. As already noticed, the case projected is that the enquiry officer was an advocate appearing for one of the members of the Board in some proceedings to which the petitioner is not the party. It may be also that he, the enquiry officer, has political views akin to that of the members of the Board of Directors of the Society. These are matters, which, in an institutional context, do not spell out

objectionable bias that could nullify disciplinary proceedings. This is plainly because an office of an advocate is not that of an employee. Even an employee can be an enquiry officer, when so appointed by a disciplinary authority, in relation to another employee of an establishment. The professional nexus and the confidence reposed by a client on a lawyer does not in any manner curtail the credibility or acceptability of a particular lawyer as an enquiry officer in an establishment to which one of his clients may be an official as a Director or otherwise. I find formidable support for this view in judgment of the Apex Court in **Saran Motors (P) Ltd., New Delhi v. Vishwanath** [1964 (2) LLJ 139]. The reasons in support of that decision are akin to what has already been stated above, namely, that such enquiries are often conducted by officers of the employer and such a relationship between the enquiry officer and the employer, vis-a-vis, the delinquent, is no reason to uphold the plea of bias. Having regard to what is aforesaid, no case is made out to uphold the plea of bias.

7. Having perused the enquiry report and having considered the procedure adopted, I do not find any ground to interfere with the same, on grounds of arbitrariness or perversity. The findings have also found support at the hands of the Registrar and the Government.

In the result, the original petition fails and is dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 10952 of 1996
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J U D G M E N T

23rd May, 2007